Article 2A.
Probate of Will.

§ 28A-2A-1. Executor may apply for probate.

Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the will admitted to probate. (C.C.P., s. 439; Code, s. 2151; Rev., s. 3122; 1919, c. 15; C.S., s. 4139; 1921, c. 99; 1923, c. 14; 1953, c. 920, s. 2; 1975, c. 300, s. 13; 2011-344, s. 3; 2012-68, s. 1.)

§ 28A-2A-2. Executor failing, beneficiary may apply.

If no executor applies to have the will proved within 60 days after the death of the testator, any devisee named in the will, or any other person interested in the estate, may make such application, upon 10 days' notice thereof to the executor. For good cause shown, the clerk of superior court may shorten the initial 60-day period during which the executor may apply to have the will proved. (C.C.P., s. 440; Code, s. 2152; Rev., s. 3123; C.S., s. 4140; 2011-284, s. 27; 2011-344, ss. 3, 4.)

§ 28A-2A-3. Clerk to notify devisees of probate of wills.

The clerks of the superior court of the State are hereby required and directed to notify by mail, all devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates. (1933, c. 133; 2011-284, s. 28; 2011-344, s. 3.)

§ 28A-2A-4. Clerk shall compel production of will.

Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the State, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt. (C.C.P., s. 442; Code, s. 2154; Rev., s. 3124; C.S., s. 4141; 2011-344, ss. 3, 4.)

§ 28A-2A-5. What shown on application for probate.

On application to the clerk of the superior court, he must ascertain by affidavit of the applicant -

(1) That such applicant is the executor or devisee named in the will, or is some other person interested in the estate, and how so interested.
(2) The value and nature of the testator's property, as near as can be ascertained.
(3) The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of the parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known.

Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate. (C.C.P., s. 441; Code, s. 2153; Rev., s. 3125; C.S., s. 4142; 2011-284, s. 29; 2011-344, s. 3.)

§ 28A-2A-6. Proof and examination in writing.

Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office. (C.C.P., s. 437; Code, s. 2149; Rev., s. 3126; C.S., s. 4143; 2011-344, s. 3.)

§ 28A-2A-7. Probate in solemn form.

(a) A person entitled to apply for probate of a will pursuant to G.S. 28A-2A-1 or G.S. 28A-2A-2 may file a petition for probate of the will in solemn form, and the matter shall proceed as an estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. The clerk of superior court shall issue a summons to all interested parties in the estate. The clerk shall schedule a hearing at which the petitioner shall produce the evidence necessary to probate the will.

(b) If an interested party contests the validity of the will, that person must file a caveat before the hearing or raise an issue of devisavit vel non at the hearing. Upon the filing of a caveat or raising of an issue of devisavit vel non, the clerk shall transfer the cause to the superior court, and the matter shall be heard as a caveat proceeding.

(c) If no interested party contests the validity of the will, the probate shall be binding, and no interested party who was properly served may file a caveat of the probated will. Initiation of a probate in common form shall not preclude a person from applying for probate in solemn form. (2011-344, s. 4.)

§ 28A-2A-8. Manner of probate of attested written will.

(a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in the following manner:

- (1) Upon the testimony of at least two of the attesting witnesses; or
- (2) If the testimony of only one attesting witness is available, then
  - a. Upon the testimony of such witness, and
  - b. Upon proof of the handwriting of at least one of the attesting witnesses who is dead or whose testimony is otherwise unavailable, and
  - c. Upon proof of the handwriting of the testator, unless he signed by his mark, and
  - d. Upon proof of such other circumstances as will satisfy the clerk of the superior court as to the genuineness and due execution of the will; or
- (3) If the testimony of none of the attesting witnesses is available, then
  - a. Upon proof of the handwriting of at least two of the attesting witnesses whose testimony is unavailable, and
  - b. Upon compliance with paragraphs c. and d. of subsection (a)(2) of this section; or
- (4) Upon a showing that the will has been made self-proved in accordance with the provisions of G.S. 31-11.6.

(b) Due execution of a will may be established, where the evidence required by subsection (a) of this section is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

(c) The testimony of a witness is unavailable within the meaning of this section when the witness is dead, out of the State, not to be found within the State, incompetent, physically unable to testify or refuses to testify. (1953, c. 1098, s. 12; 1977, c. 795, s. 2; 1979, c. 107, s. 4; 2011-344, ss. 3, 4.)

§ 28A-2A-9. Manner of probate of holographic will.

A holographic will may be probated only in the following manner:

(1) Upon the testimony of at least three competent witnesses that they believe that the will is written entirely in the handwriting of the person whose will it purports to be, and that the name of the testator as written in or on, or subscribed to, the will is in the handwriting of the person whose will it purports to be; and

(2) Upon the testimony of one witness who may, but need not be, one of the witnesses referred to in subdivision (1) of this section to a statement of facts showing that the will was found after the testator's death as required by G.S. 31-3.4. (1953, c. 1098, s. 12; 2011-344, s. 3.)

§ 28A-2A-10. Manner of probate of nuncupative will.

(a) No nuncupative will may be probated later than six months from the time it was made unless it was reduced to writing within 10 days after it was made.

(b) Before a nuncupative will may be probated

(1) Written notice must be given to the surviving spouse, if any, and to the next of kin, by the clerk of the court in which it is to be probated, notifying them that the will has been offered for probate and that they may, if they desire, oppose the probate thereof, or

(2) When the surviving spouse or next of kin are not known or when for any other reason such notice cannot be given, a notice to the same effect must be published not less than once a week for four consecutive weeks in some newspaper published in the county where the will is offered for probate, or if no newspaper is published in the county, then in some newspaper having general circulation therein.

(c) A nuncupative will may be probated only in the following manner:

(1) Upon the testimony of at least two competent witnesses who establish the terms of such will and who state that they were simultaneously present at the making thereof, that the testator declared he was then making his will, and that they were then and there specially requested by him to bear witness thereto; and

(2) Upon the testimony of one competent witness, who may but need not be one of the witnesses referred to in subdivision (1) of this subsection, that the will was made in the testator's last illness or while he was in imminent peril of death, and that he did not survive such sickness or imminent peril, but it is not necessary that all such facts be proved by the testimony of the same witness. (1953, c. 1098, s. 12; 2011-344, s. 3.)

§ 28A-2A-11. Probate of wills of members of the Armed Forces of the United States.

In addition to the methods already provided in existing statutes therefor, a will executed by a person while in the Armed Forces of the United States or the United States Merchant Marine, shall

be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the State at the time said will is offered for probate) upon the oath of at least three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise real property as well as to bequeath personal estate of all kinds. This section shall not apply to cases pending in courts and at issue on the date of its ratification. (1919, c. 216; C.S., s. 4151; Ex. Sess. 1921, c. 39; 1943, c. 218; 1945, c. 81; 1953, c. 1098, s. 13; 2011-183, s. 27; 2011-284, s. 30; 2011-344, s. 3.)

§ 28A-2A-12. Probate conclusive until vacated; substitution of consolidated bank as executor or trustee under will.

Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal. Provided, that whenever in a will so probated or recorded a bank or trust company shall be named executor and/or trustee and shall have at the time of such probate and recording become absorbed by or consolidated with another bank or trust company or shall have sold and transferred all its assets and liabilities to another bank or trust company doing business in North Carolina, such latter bank or trust company shall be deemed substituted for and shall have all the rights and powers of the former bank or trust company. (C.C.P., s. 438; Code, s. 2150; Rev., s. 3128; C.S., s. 4145; 1929, c. 150; 1941, c. 79; 2011-344, s. 3.)

§ 28A-2A-13. Wills filed in clerk's office; certified copies filed for real property in other counties.

(a) All original probated wills shall remain in the office of the clerk of superior court, among the public records of the court where the wills were probated.

(b) If a probated will devises real property outside the county where the will was probated, a copy of the will and a copy of the certificate of probate of the will, certified under the hand and seal of the clerk of the superior court of the county where the will was probated, may be filed in the office of the clerk of the superior court of any other county in this State in which the real property is situated. The filing of the probated will in the county where the real property is situated shall have the same effect for purposes of G.S. 31-39(c) as to the priorities of claims against the real property as if the will had originally been probated in that county and as if the clerk of superior court of that county had jurisdiction to probate the will. (1777, c. 115, s. 59; R.C., c. 119, s. 19; Code, s. 2173; Rev., s. 3129; 1921, c. 108, s. 1; C.S., s. 4146; 2011-344, s. 3; 2014-107, s. 2.1.)

§ 28A-2A-14. Validation of wills heretofore certified and recorded.

All wills which have prior to March 9, 1921, been certified and recorded in the office of the clerk of the superior court of any county, substantially following the provisions of G.S. 28A-2A-13, are hereby validated and approved as to the conveyance and transfer of any title to real estate as contained therein, to the same extent as if said wills had originally been probated and filed in said county, and the clerk of the superior court of said county had had jurisdiction to probate the same, provided the probates and witnesses to the said wills are sufficient and according to law. (1921, c. 108, s. 2; C.S., s. 4146(a); 2011-344, ss. 3, 4.)

§ 28A-2A-15. Certified copy of will proved in another state or country.

When a will, made by a citizen of this State, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this State, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original. (1802, c. 623; R.C., c. 44, s. 9; C.C.P., s. 445; Code, s. 2157; Rev., s. 3130; C.S., s. 4147; 2011-344, s. 3.)

§ 28A-2A-16. Examination of witnesses by affidavit.

(a) The examination of witnesses to a will may be taken and subscribed in the form of an affidavit before a notary public or other person who is authorized to administer oaths in the jurisdiction where the examination is held.

(b) A photographic copy of the original will certified to be a true and exact copy thereof by the clerk of superior court of the county in which the will is to be probated may be used in the examination of the witnesses in the procedures set out in subsection (a) of this section; provided, the said clerk has in his possession the original will at the time of examination of the witnesses.

(c) Affidavits taken in accordance with subsection (a) of this section shall be transmitted by the person taking the affidavit to the clerk of superior court of the county in which the will is to be probated.

(d) Testimony submitted in accordance with subsection (a) of this section is competent in regard to all requirements of G.S. 31-3.3 and to establish that a will was executed in compliance with the requirements of G.S. 31-3.3.

(e) Nothing in this section is to limit or otherwise affect the authority of a clerk of superior court in the exercise of his authority as judge of probate under G.S. 28A-2-1 to:

(1) Issue subpoenas under G.S. 7A-103; or

(2) Order the taking of depositions of witnesses. (1917, c. 183; C.S., s. 4149; 1933, c. 114; 1957, c. 587, ss. 1, 1A; 1979, c. 226, s. 1; 1987, c. 78, s. 2; 2011-344, ss. 3, 4.)

§ 28A-2A-17. Certified copy of will of nonresident recorded.

(a) Subject to the provisions of subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State either at the time of its execution or at the time of the death of the testator, or as otherwise recognized as valid under the provisions of G.S. 31-46, must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will

is offered for probate, from the testimony of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State either at the time of its execution or at the time of the death of the testator, or as otherwise recognized as valid under the provisions of G.S. 31-46, does not appear as required by subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State. (C.C.P., s. 444; 1883, c. 144; Code, s. 2156; 1885, c. 393; Rev., s. 3133; C.S., s. 4152; 1941, c. 381; 1965, c. 995; 1987, c. 78, s. 3; 2011-344, ss. 3, 4; 2013-91, s. 1(h).)

§ 28A-2A-18. Probates validated where proof taken by commissioner or another clerk.

In all cases of the probate of any will made prior to March 8, 1899, in common form before any clerk of the superior courts of this State, where the testimony of the subscribing witnesses has been taken in the State or out of it by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county of this State, and the will admitted to probate upon such testimony, the proceedings are validated. (1899, c. 680; Rev., s. 3134; C.S., s. 4153; 2011-344, s. 3.)

§ 28A-2A-19. Probates in another state before 1860 validated.

In all cases where any will devises land in this State, and the original will was duly admitted to probate in some other state prior to the year 1860, and a certified copy of such will and the probate thereof has been admitted to probate and record in any county in this State, and it in any way appears from such recorded copy that there were two subscribing witnesses to such will, and its execution was proved by the examination of such witnesses when the original was admitted to probate, such will shall be held and considered, and is hereby declared to be, good and valid for the purpose of passing title to the lands devised thereby, situated in this State, as fully and completely as if the original will had been duly executed and admitted to probate and recorded in this State in accordance with the laws of this State. (1913, c. 93, s. 1; C.S., s. 4155; 2011-344, s. 3.)

§ 28A-2A-20. Validation of wills recorded without probate by subscribing witnesses.

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for that county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised, to the same extent and as completely as if the execution thereof had been

duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud. (1921, c. 66; C.S., s. 4157(a); 1997-81, s. 3; 2011-284, s. 31; 2011-344, s. 3.)

§ 28A-2A-21. Validation of wills admitted on oath of one subscribing witness.

In all cases where last wills and testaments which appear as recorded in the record of last wills and testaments to have had two witnesses thereto and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1890, upon the oath and examination of one of the witnesses, such proof being taken in writing and recorded, and the certificate of probate of the clerk of the court states that such a will is proven by one of the subscribing witnesses thereto and the handwriting of the other subscribing witness being a nonresident is proven under oath, and such a will and certificate has been recorded in the record of wills of the proper county, such probate is hereby validated as fully as if the proof of the handwriting of the nonresident witness had been taken in regular form in writing and recorded. (1929, c. 41, ss. 1, 2; 2011-344, s. 3.)

§ 28A-2A-22. Validation of probates of wills when witnesses examined before notary public; acts of deputy clerks validated.

Whenever any last will and testament has been probated, based upon the examination of the subscribing witness or the subscribing witnesses, taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, it is hereby in all respects validated and shall be sufficient to pass the title to all real and personal property purported to be transferred thereby.

All acts heretofore performed by deputy clerks of the superior court in taking acknowledgments, examining witnesses and probate of any wills, deeds and other instruments required or permitted by law to be recorded, are hereby validated. Nothing herein contained shall affect pending litigation. (1945, c. 822; 1973, c. 445; 1977, c. 734, s. 1; 1979, c. 226, s. 2; 2011-344, s. 3.)

§ 28A-2A-23. Validation of wills when recorded without order of probate or registration upon oath and examination of subscribing witness or witnesses.

Whenever any last will and testament has been duly presented to the clerk of the superior court, and the said will together with the oath and examination of the subscribing witness or witnesses thereto taken before a notary public in the county in which the will is probated, or taken before a notary public of any other county, or before the clerk of the superior court of said county, or any other county, is duly recorded in the office of the clerk of the superior court of the said county, without a formal order of probate or registration, such will, if executed in accordance with the laws of this State, is hereby validated with respect to the probate and registration thereof and shall be sufficient to pass title to all real and personal property purported to be transferred thereby to the same extent that the said will would have done so if there had been a formal order of probate and registration. This section shall apply only to wills presented to the clerk of the superior court and recorded prior to the first day of January, 1943. (1951, c. 725; 2011-344, s. 3.)